UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY GRIFFIN,
MARK MCINDOO, and   No. 5:16-CV-354 (LEK/ATB)
SUSAN DETOMASO,
o/b/o themselves, and others similarly situated,

                       Plaintiffs,

      v.

ALDI, INC., et al.,

                       Defendants.

FRANK S. GATTUSO, ESQ., *et al.*, for Plaintiffs
LOUISA J. JOHNSON, ESQ., *et al.*, for Defendant Aldi, Inc.
DAVID TEMES, ESQ., *et al.*, for the O'Hara Law Office, P.C.

ANDREW T. BAXTER, United States Magistrate Judge

REPORT-RECOMMENDATION

Presently before the court is the dispute over the N.Y. Judiciary Law § 475 attorneys' fee lien held by former counsel for plaintiffs, the O'Hara Law Office, P.C. ("the O'Hara Firm"),[1] whose sole shareholder, Dennis O'Hara, died on November 21, 2016, during the early stages of the litigation in this case. Senior District Judge Kahn referred this dispute to me for a hearing and Report-Recommendation, if the interested parties could not settle the dispute after further negotiations. (Dkt. No. 116).

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[1] The O'Hara Law Office, P.C., formerly did business as O'Hara, O'Connell & Ciotoli. Although the P.C. is still a viable entity, the O'Hara firm no longer has an active law practice.

This court ordered briefing with respect to the dispute (Dkt. Nos. 122-128) and conducted a pre-hearing conference with the parties on March 27, 2019. During that conference, the court facilitated an agreement between the interested parties that $250,000 of the $500,000 in attorneys' fees that Judge Kahn ordered be held in escrow, should be distributed to the O'Hara Law Office, P.C. and the estate of Dennis O'Hara, now the sole shareholder.[2] The administrator of this estate, Carol O'Hara is not an attorney.

This court found, based on the submissions of the parties, and a detailed review of the billing records of the O'Hara firm, that $250,000 corresponds to that portion of the total compensation to attorneys previously approved by Judge Kahn that fairly represents the value of the services that the O'Hara firm rendered to plaintiffs in this action before the death of Dennis O'Hara. See N.Y. Rules of Professional Conduct, Rule 5.4(a)(2). Accordingly, this court concluded that the sharing, by other plaintiffs' counsel, of $250,000 in attorneys fees with the O'Hara firm and the estate of Dennis O'Hara, would be consistent with N.Y. Rules of Professional Conduct, Rule 5.4, notwithstanding the fact that the administrator of the estate is not an attorney. See New York State Bar Association, Committee on Professional Ethics Opinions 1159, 1128 (Dkt. No. 122-1).

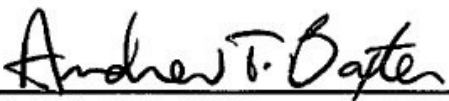**WHEREFORE,** based on the findings above, and the consent of the interested parties above, it is

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[2] Other aspects of the settlement between the interested parties was placed on the record at the conclusion of the conference.

RECOMMENDED, that, pursuant to his November 15, 2018 Order Granting Final Approval of Settlement, ¶ 22 (Dkt. No. 109 at 8-9), Senior District Judge Kahn enter a Supplemental Order Granting Final Approval of Settlement, approving the parties' agreement that $250,000 of the $500,000 in withheld attorneys' fees previously approved by Judge Kahn, be distributed by the Settlement Claims Administrator to the O'Hara Law Office, P.C. in full satisfaction of the N.Y. Judiciary Law § 475 attorneys' fee line held by the O'Hara Law Office, P.C., and order that the Settlement Claims Administrator may distribute the remaining $250,000 in attorneys' fees to other counsel for plaintiffs, consistently with Judge Kahn's Orders.

Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), the parties have fourteen days within which to file written objections to the foregoing report. The parties having knowingly and voluntarily waived that right following an opportunity to review a draft of this Report-Recommendation, the Clerk is directed to immediately deliver this Report-Recommendation to Senior Judge Lawrence E. Kahn, for his consideration without the normal waiting period of fourteen days.

Dated: April 8, 2019

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Hon. Andrew T. Baxter
U.S. Magistrate Judge